A DISCOURSE ON THE USE AND DOCTRINE OF ATTACHMENTS.

WITH

A REPORT of Proceedings in His Majesty's Court of Common Pleas, at Westminster, against an Attorney, collaterally, during the Terms of Trinity and Michaelmas, 1784, and Hilary and Easter, 1785.

WHICH PROCEEDINGS WERE ENFORCED BY

WRIT OF ATTACHMENT:

AND A

PROPOSAL FOR AN ACT OF PARLIAMENT.

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DISCOURSE

ON THE

USE AND DOCTRINE

OF

ANTIQUITY.

PREFACE.

THE doctrine of Attachments has not undergone that examination which its great moment certainly requires. Nor would the author of the following pages on a ſubject of ſuch extent, and on which ſo little (if any) information is to be collected from books, have ventured to offer his ſentiments to the Public, had he not been actuated by a natural deſire to vindicate his profeſſional conduct and character from miſrepreſentation. And though wholly unambitious of literary fame, he yet hopes

hopes that his remarks may afford ſome uſeful inſtruction to his brother practitioners in the law.

The oppreſſion of an obſcure individual*, ſaid the late Judge Blackſtone, gave riſe to the famous Habeas Corpus act. This obſervation is again quoted by the elegant and juſtly celebrated Junius: and Monſ. de Lolme, with a degree of enthuſiaſm which the occaſion may well juſtify, ſays, "The ſame "is well worth repeating a third time, "for the juſt idea it conveys of that readi- "neſs of all orders of men to unite in de- "fence of common liberty, which is a cha- "ràcteriſtic circumſtance in the Engliſh go- "vernment."

* Francis Jenks, who was confined in cloſe cuſtody two months, through the delays made by the ſeveral Judges to whom he applied in granting him a Habeas Corpus. Vide State Trials, vol. vii. Anno 1676.

Although

Although the Author in an introductory diſcourſe will uſe his endeavour to unfold the delicate texture of proceedings by attachment; yet he fervently wiſhes, that a matter of ſuch national concern may receive illuſtration from an abler pen. In the mean time, his utmoſt ambition is to be thought an obſcure individual, whoſe preſent conduct, at a future day, may occaſion an extenſion of civil liberty, and add ſecurity to the rights of his countrymen.

INTRODUC-

INTRODUCTORY DISCOURSE.

The political liberty of the ſubject is a tranquillity of mind ariſing from the opinion each man has of his ſafety.

MONTESQUIEU.

PERSONAL ATTACHMENTS are neither congenial with the freedom and the laws of England, nor conſiſtent with the ſpirit of Magna Carta, which is ſaid "To protect every individual of "the nation in the free enjoyment of his life, "his liberty, and his property, unleſs forfeited "by the judgement of his peers, or the law of "the land." The proceſs of an attachment is founded on a contempt; it iſſues from the Courts of Common Law, on the ſuggeſtion of a Judge, who decides on the contumacy; and the party is impriſoned during the pleaſure of that Judge, or

his brethren on the ſame bench, without trial by Jury — without a mode of appeal — and without the benefit of an Habeas Corpus. Monteſquieu ſays, " There is no liberty, if the judiciary " power be not ſeparated from the legiſlative and " executive. Were it joined with the legiſla- " tive, the life and liberty of the ſubject would " be expoſed to arbitrary control; for the Judge " would be then the legiſlator. Were it joined " to the executive power, the Judge might be- " have with violence and oppreſſion." Attachments have hitherto been tolerated: but as on the one hand, every man of ſound underſtanding muſt view this mode of proceeding with a jealous eye, ſo, on the other, it is his duty to contribute all that is in his power towards its ſubverſion, whenever he perceives it to be accompanied or followed by oppreſſion.

If the operation and conſequences of attachments be ſo replete with vexation and calamity, it may naturally be aſked, why are they ſuffered to have any place in a free country? The anſwer is, that in ſome caſes they are indiſpenſably neceſſary to the adminiſtration of public juſtice. The proceſs by attachment appears to have been deviſed for the accommodation of ſuitors, and to maintain the authority and true dignity of the ſeveral Courts; without which the laws would ſoon loſe their force, and anarchy and confuſion would reign in thoſe places, where now we ſee the rights of peo-

people determined in a quiet and ſolemn manner. This is the origin, and this the defence of attachments. They have been confirmed by ancient cuſtom and immemorial uſage, as well as recogniſed by divers acts of Parliament. They are powers committed to the Judges to be uſed with the moſt perfect coolneſs and deliberation, and that only on occaſions of the moſt urgent neceſſity. Judges, like other men, are liable to the common frailties of human nature; and although their conduct for years paſt has not only defied cenſure, and eſcaped ſuſpicion, but merited approbation and applauſe, yet that they *may* err is not a thing that is impoſſible. The power of proceeding by perſonal attachment may be abuſed. This powerful engine, which ought always to be applied with delicacy and reſerve, may be wielded with a raſh and a rough hand, and in caſe the proceſs ſhould be miſapplied, the oppreſſion of the Star Chamber is reſtored *, and the glorious and long-boaſted privileges of Engliſhmen are ſubverted.

There is not a greater beauty in the municipal law of this country than that the executive part thereof, in civil proceedings, is ſo framed as not to be an haſty proceſs, even after judgement. —

* Proceedings on a writ of attachment are by interrogatories and examinations, and are conducted on the ſame practical principles which directed the practical forms in the Star Chamber.

" There may," ſays the Genius of England, " be error in that judgement — My people " ſhall not be impriſoned or amerced wrong- " fully." And on thoſe principles writs of error and appeal are awarded. Where an attachment iſſues, there is no prudent delay, no appeal, no relief, as in caſes wherein judgement has been given by twelve men; and the remedy, in caſe of injuſtice, appears ſo diſtant, uncertain, and expenſive, that not one perſon among a thouſand can claim it. Although the proceſs by attachment may be extended, and uſed in direct violation of the principles of the Conſtitution; yet it muſt be allowed, that attachments in caſes of contumacy, or, in other words, of reſiſtance to any legal rules or orders of the courts of common law, or inſult to the perſons who preſide in them, are neceſſary, and eſſential to the very exiſtence and life of juſtice. All that the author contends for here is, that the ſubject ought not to be without appeal.

What has been urged againſt any arbitrary exerciſe of the power of attachments, will derive additional confirmation from a few obſervations on the different ſorts now uſed in equity and at common law.

In Chancery, attachments are the only executions in uſe to enforce obedience to any order of the Court. This, on account of the great buſineſs done there, might be an object of alarm,

but

but the ſubject is intitled to (what the author of this little treatiſe contends for) a right of appeal. And here it is very much to the author's preſent purpoſe, to call the attention of the reader to a material diſtinction between the practice of the Courts of Common Law and that of the great Court of Equity. "From this Court of "equity in Chancery", ſays the late learned Judge Blackſtone, "as from the other ſuperior "courts, an appeal lies to the Houſe of Peers. "But there are theſe differences between appeals "from a Court of Equity and Writs of Error "from a Court of Law. Firſt, that the former "may be brought upon any interlocutory mat-"ter, the latter upon nothing but only a defini-"tive judgement." Blackſtone's Commentaries, book iii. page 55. This difference is the ſource of the complaint. In equity the ſubject is protected by appeal: at common law he is deſtitute of this benefit, and is liable to an arbitrary and uncontrovertible deciſion *.

In

* The author cannot take leave of the Court of Chancery without ſoliciting permiſſion to pay a juſt tribute to the great character who now preſides there. There is not perhaps a man who more thoroughly comprehends, or more perfectly underſtands, the true conſtitutional frame and texture, the origin, and the eſtabliſhment of the ſeveral courts of juſtice, than Lord Thurlow. And many muſt have had occaſions of obſerving, that it is a maxim with his Lordſhip to refuſe a de-

cree

In the Courts of King's Bench and Common Pleas, there are two ſorts of attachments: attachments for contempt, and attachments for non-payment of money. This diſtinction is indeed ſupported by modern practice: yet the author humbly conceives it to be improper, and offers an opinion, that both theſe writs are for contempt, and that concerning which, the party ought to be examined upon interrogatories before the Court can definitively pronounce him to be in contempt. That attachments for contempt, and attachments for non-payment of money, are preciſely of the ſame kind, is evident from the ſingle circumſtance, that the terms as well as the words of both theſe writs are the ſame*.

cree where the party has a remedy at Common Law, or can receive a recompence for his injury at the hands of a Jury.

* George the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and ſo forth. To the Sheriffs of London, greeting. We command you that you attach A. B. if he be found in your bailiwic, and him ſafely keep, ſo that you may have him before our Juſtices at Weſtminſter on next after to anſwer us of and concerning thoſe things which in our behalf ſhall be then objected againſt him, and have you there this writ; witneſs, Alexander Lord Loughborough, at Weſtminſter, the 12th day of February, in the 24th year of our reign.

True

True it is, that the indorſements differ, and it is from this difference that the proceſs is now conſtrued or interpreted a complete execution, which deprives the ſubject of bail, and precludes his demand of interrogatories; and the rule on which the proceſs iſſues not being a definitive judgement, no writ of error lies, and the ſubject is without appeal.

If any ſpecies of attachment is ſuch, that it does not admit of bail, it is not, as many practitioners contend, of the nature of an execution, but far worſe. By the law of the land, an execution is awarded only upon a definitive judgement on record; which judgement is ſubject to a reviſion by a ſuperior court, and when the execution iſſues, there muſt not be any appeal depending. With what vigilence, as has already been obſerved, does the ſpirit of the Conſtitution guard againſt an error in that violent proceſs, execution! and how ſtrongly by theſe means are the rights and perſons of the people fortified and protected! But, if ſuch caution and anxious delicacy are involved in the nature and frame of executions, with what miſtruſt and jealouſy are unbailable attachments to be viewed? Writs awarded with far leſs caution, on ſentences without appeal, and pronounced againſt the perſon accuſed by the very parties who are his accuſers, and who, in this particular caſe, unite in themſelves

ſelves the legiſlative — the judiciary — and the executive powers!

It is a matter of doubt, whether either of the courts of common law has, after ſolemn argument, ever declared, that there is a kind of attachments not bailable. It ſeems abſurd, that a man ſhould be attached to anſwer, and that when he tenders bail by way of ſecurity for his anſwering, he ſhould be told, that no anſwer can be accepted. The law recognizes all writs by their real names and uſes: nor does there appear any ſufficient reaſon why writs of attachment ſhould be made an exception to the general rule. But independently of theſe arguments drawn from the particular form of the writ, or our political conſtitution, it is difficult to conceive how, as has been obſerved already, any attachment can be explained or interpreted otherwiſe than as a contempt of ſome juſt order, or inſult to the dignity of ſome court of record: and with regard to this alledged offence, every man who thinks himſelf wrongfully accuſed, or otherwiſe aggrieved, ought to have an opportunity of vindicating his innocence. A caſe might ariſe, wherein by a rule of court, a man might be ordered to pay to another a ſum of money, and notwihſtantding his refuſal, his behaviour not be improper; for it might happen that the Court had no authority to make the rule; and

in

in that caſe wherein does the contumacy conſiſt? Why is a man, who is not in the wrong, to ſuffer impriſonment? And if attachments are not bailable, what is that man's remedy? On a definitive judgement on record, the party againſt whom judgement is pronounced, by not appealing, acquieſces in the legality of the ſentence, and an execution iſſues cum aſſenſu ſuo. If therefore attachments are to imitate executions, let them be governed by the ſame rules of practice, and let them not iſſue without affording to the ſuffering party a mode of appeal.

The author now in the laſt place will endeavour to treat of the remedy for any caſe, wherein a ſubject finds oppreſſion, and the Judge conducts himſelf with impropriety. The redreſs may be had either,

Firſt, — By the very ſerious mode of impeachment: and in ſuch a proceeding, the Public would expect the complainant, not only to charge, but to make out by legal and clear evidence, acts of malice in the conduct of the judges accuſed. Or,

Secondly, — By petition to the Houſe of Commons, which would be the more adviſable mode.

The reader, on inquiry, will find, that at the meeting of every Parliament, there is a Committee appointed by the votes of the Houſe for the

redreſs of law grievances. The laſt vote is in theſe words,

" *Mercurii* 26° *Die Januarii*, 1785.

" Ordered,

" That the grand Committee for courts of " juſtice do ſit every Saturday in the afternoon " in the Houſe."

The mode of petitioning, the author apprehends, is to addreſs the whole Houſe; as the Committee juſt mentioned, though voted, are not elected. The complainant in his petition, muſt ſtate with great preciſion, the whole proceedings, as well as the rules and orders of the Judge, or of the Court below, and pray that his caſe may be taken into ſerious conſideration, and that the ſame may be referred to the Grand Committee for Courts of Juſtice. On the reference, witneſſes would be examined, as in other caſes, and, if the Committee ſhould report that the Judges accuſed were deficient in the performance of their duty, either by acting contrarily to the law, or by refuſing, or omitting to do what the law enjoins, an addreſs might be preſented by the Houſe of Commons to the Crown. And if the Houſe of Peers ſhould follow their example, the Judges complained of might be removed. For notwithſtanding that the Judges, by the firſt ſtatute of George III. cap. 23, hold

their

their offices independently of the Crown and for life, yet by the ſecond ſection of the ſame ſtatute, it is enacted, " That it may be lawful for His " Majeſty, his heirs and ſucceſſors, to remove any " Judge or Judges upon the addreſs of both " Houſes of Parliament."

When we are told, that no petition has been depending before the Grand Committee for Courts of Juſtice, during the laſt two hundred years, we may fairly conclude, that to the honour of England, her laws in the courſe of that long period, have been adminiſtered with juſtice and integrity; or, that, to the diſgrace of Britons, men who gloried in the name of freedom, have been tame, doubtful of ſucceſs, or ignorant of their civil conſtitution.

THE AUTHOR, having in a preliminary diſcourſe treated the ſubject of attachments in general, proceeds to lay before the Grand Tribunal—the Public, his own particular caſe, together with a faithful Report of the whole evidence, and the ſeveral rules and orders made thereon.

His conduct, and the principles which regulated his practice he ſubmits to the candid reviſion of all practitioners, and from the ſequel he truſts it will appear to them that the Judges of his Majeſty's Court of Common Pleas, in Trinity Term 1784, and in the ſubſequent Terms, adopted rules new and unprecedented: and certainly Judges are competent to make practical rules, where they ſee occaſion; it is a part of their truſt, and the only reſtriction of this delegated power, is diſcretion and care that ſuch rules be conſiſtent with the laws of the land.

With regard to the practice of the Courts of King's Bench and Common Pleas, in caſes like the Author's where an Attorney had given his undertaking to put in bail, and afterwards neglected, or refuſed ſo to do, the Author's opinion previous to Trinity Term 1784 was, "That the invariable mode of compelling the perſon who thus undertook, was an application to the Court for a rule that the Attorney ſhould ſhew cauſe, why he ſhould not put in and juſtify good bail." And in which rule ſometimes were added the words, "or pay the debt and coſts." This rule was afterwards

terwards made abſolute. And if the party *then* neglected to put in bail, he became undoubtedly in contempt of a legal order: an attachment was then iſſued, with the entire approbation of every honeſt man; for otherwiſe the ſuitor would have been deprived of his remedy, and the fountain of juſtice would have been choked up. The rule for the attachment thus obtained did not render to the Plaintiff in the action pecuniary ſatisfaction, but his remedy was afforded in a collateral way. The Court would not allow the clearance of the contempt, until the party aggrieved ſhould be ſatisfied as to his coſts and damages.*

In order to avoid all ſuſpicion of miſrepreſentation, the author propoſes to relate the evidence

* The Author, having thus declared his digeſted ſentiments concerning the mode to compel an Attorney to perform his undertaking, begs leave to ſubmit to the judgement of the public, what was once his ſpeculative opinion on the practical rule directing an Attorney "to put in and perfect good bail or to pay the "debt and coſts." The firſt part of the alternative included in this rule appeared to the Author to be ſtrictly legal, and conſequently, that in diſobedience thereof, an attachment would lie for contempt. But the ſecond part "to pay the debt and coſts," he always conſidered ſuperfluous, or, if it meant any thing, that it was merely an inſtruction or notice to the Attorney of what the Court required, in caſe the firſt part of the rule ſhould not be complied with; and that in fact the latter part of the rule was no ſolid ground for charging a perſon with contumacy. And here the Author takes the liberty of aſking thoſe his brother practitioners who contend, there is a ſort of attachment not bailable, whether an attachment for diſobedience of an electionable rule, as the above is, is to be deemed an execution, or a bailable attachment?

before

before the Court, and the orders which, on that evidence were iſſued, in the moſt literal manner, and to make no other comment or addition to the report, than his own inſtructions to Council previous to the making of each rule. For the ſame reaſon, the Author avoids all obſervations on the rules after they were made. If he declines to report the arguments of his opponents, it is only, leſt he ſhould not do them juſtice. And every reader will be at liberty to exerciſe the full extent of his underſtanding againſt the reporter.

Kirkman *verſus* V——n

The reporter was concerned for the defendant at the inſtance of a Banker.

Mr. Pickering's undertaking, and the affidavit made by the Plaintiff's Attorney, and on which the firſt application to the Court of Common Pleas was founded. Vide Appendix No. I.

Upon that evidence the following rule was made.

Trinity Term, 24th Geo. III.

In the Common Pleas,

Kirkman, Eſq. againſt V——n.

Tueſday, the 22d of June.

Upon reading the affidavit of Stephen Price, Gentleman, and the paper writing thereunto annexed, it is ordered, that Mr. Thomas Abree Pickering, mentioned in the ſaid affidavit upon notice of this rule, to be given to him or his agent, ſhall ſhew cauſe to this Court on Friday next, why he ſhould not pay to the Plaintiff, or to his Attorney, the debt and coſts in this

cauſe,

cauſe, for not putting in bail purſuant to his the ſaid Thomas Abree Pickering's undertaking.

By the Court.

Skinn.

On the motion of Serjeant Bolton, for the Plaintiff.

The inſtructions given to Council, to ſhew cauſe againſt the rule being made abſolute were,

That Mr. Serjeant Bolton had applied for, and obtained a wrong rule. The rule according to the practice ought to have been "*to put in good bail "within a limited time, or pay the debt and coſts.*" And Mr. Pickering had already ſhewn a diſpoſition to comply with the practice, as he had actually put in unexceptionable bail before the rule was made, or the affidavit was ſworn by Mr. Price, and which the latter knew, and who does not ſwear, that bail were not put in; or that he had excepted to them.

That Mr. Pickering, thinking his conduct called in queſtion, had made an affidavit, which he left to the diſcretion of his Council to read, or not.—The affidavit could only go to the merits, and the practice alone was ſufficient to diſcharge the rule, or to change the words of it.

Mr. Serjeant Groſe ſhewed for cauſe; *Firſt*—The practice; *Secondly*, —The merits diſcloſed by Mr. Pickering's affidavit; for the ſame vide Appendix No. II.

The Court made the rule abſolute againſt Mr. Pickering.

On

On the next day the reporter went down to Weſtminſter Hall and related to his Counſel, that many practitioners in the city were alarmed at the Court's deciſion on the previous day, and were deſirous that he ſhould mention that circumſtance, as well as repeat to the Court the practice on undertakings.— Mr. Serjeant Groſe did ſo, and moſt of the Bar ſtanding up to confirm this declaration, the Court made the following rule.

Trinity Term, 24th Geo. III.

In the Common Pleas.

Kirkman, Eſq. againſt V—n.

Wedneſday, 30th of June.

Upon reading a rule made in this cauſe on the 22d of this inſtant, and the affidavit of Stephen Price, gentleman, and the affidavit of Thomas Abree Pickering, gentleman, and the defendant, and on hearing Counſel on both ſides, it is ordered, that the ſaid rule be enlarged until the next term, upon the ſaid Thomas Abree Pickering's undertaking, that the bail put in for the defendant in this cauſe do juſtify themſelves immediately, and that the defendant plead iſſuably inſtanter to the plaintiff's declaration delivered in this cauſe, rejoin gratis, and take ſhort notice of trial for the ſitting after this term; and alſo undertaking, that, in caſe a verdict ſhall be found for the Plaintiff on the trial of the cauſe, that

he

he the ſaid plaintiff ſhall be at liberty to enter up judgement againſt the ſaid defendant as of this term.

By order of the Court,
Skinn.

On the motion of Serjeant Groſe for the ſaid Thomas Abree Pickering. — Serjeant Bolton for the plaintiff.

The defendant immediately pleaded the general iſſue, non aſſumpſit, and put himſelf on his country; and the rule being made the laſt day of the term, the reporter could not comply with that part which reſpected the juſtification of the bail, and therefore the reporter wrote to the plaintiff's attorney the following letter:

"Kirkman, Eſq. *verſus* V——n.

"Sir,

"The Court having yeſterday afternoon reconſidered the rule made the preceding day, hath granted me a rule, of which a copy is left herewith — as alſo the plea of the general iſſue, and I am willing to accept the iſſue with notice of trial for the adjourned* ſittings after this term, and to give judgement as of the term; and if

* The adjourned ſittings are here mentioned, for the venue being in Middleſex, the ſittings were the very next morning, and it could not be thought the plaintiff's attorney could be ready on ſuch ſhort notice.

you disapprove of the bail put in, I am ready to add to, and justify any other bail, on your signifying thus much to me, by notice in writing, Dated the 1st day of July, 1784.

" Yours, &c.

" T. A. Pickering,

" Defendant's Attorney.

" To Mr. Price, Attorney for the above-mentioned plaintiff."

The plaintiff's attorney took no notice of the last rule, or the above letter, and in Michaelmas Term applied to the Court for the restoration of the original rule; and the matter again coming on, and the Court differing, the plaintiff had leave to file farther affidavits by the next hearing.

This direction appeared ominous, and induced the reporter to give his Counsel much fuller instructions. These were to the following effect:

" That reviving the first rule after Mr. Pickering's very strict compliance with the last, was severity; but as the Court seemed inclinable to adopt a new rule, it became a serious matter to Mr. Pickering, as well as the profession in general — That neither the practice nor the law of the land, in Mr. Pickering's conception, could warrant the rule sought for. That if the plaintiff sought for pecuniary satisfaction, or damages, he could not receive them from the hands of the Judges in a summary way — his remedy was by action, and trial by jury. That no one case in

print

print would favour the rule, but that a variety of them confirmed Mr. Pickering's ſentiments, particularly, *Pitt verſus Yalden* — *Burrows's Reports*, vol iv. page 2060 — on a rule to ſhew cauſe why *an attorney ſhould not pay the debt and coſts*" — Mr. Juſtice Yates ſaid, "We ought not to entertain an application for a ſummary proceeding: it ought to be left to a jury, as to the quantum of damages."

At one of the hearings Mr. Juſtice Gould threw out for the obſervation of the Bar, whether Mr. Pickering had not placed himſelf in the ſituation of the Sheriff? It was not denied; and Mr. Pickering did not wiſh to ſtand upon any other footing — The Sheriff, ab initio, is commanded by the Court to do an act — To take the body of the defendant — To return the writ — To bring in the body — And in imitation of thoſe orders, Mr. Pickering ſhould, as the practice has always been, have been ordered to put in bail, which if he failed or neglected to do, he, like the Sheriff would have been guilty of a contempt of a juſt order.

That it was ſubmitted, whether the practice, ſo ſtrongly ſupported by the printed caſes, as well as conſtitutional reaſoning, were not ſolid grounds for oppoſition — As to the merits, or what was to be diſcloſed by the plaintiff's farther affidavit, they would be modified to the ſentiments of the Court, which the opponent attorney, after ſo many hearings, was then in full poſſeſſion of. — The affidavit, if it contradicted Mr. Pickering's,

might be treated with one remark; that the contrariety was a reaſon for the verdict of a jury: or if the affidavit when produced, was ſilent in regard to the plaintiff's propoſals of accepting 6s. 8s. or 5s. in the pound, or defended that charge evaſively, the Court undoubtedly would not adjudge Mr. Pickering to pay 20s. in the pound.

The Court made the following rule:

Michaelmas Term, 25th Geo. III.

In the Common Pleas.

Kirkman, Eſq. againſt V——n.

Monday, the 29th of November.

Upon reading the rule made in this cauſe on the 22d and 30th days of June laſt, and the affidavit of the plaintiff, and Jacob Kirkman, and Stephen Price, Gentleman— It is ordered, that Mr. Thomas Abree Pickering, the defendant's attorney, do and ſhall pay to the plaintiff, or his attorney, the debt and coſts in this cauſe, for not putting in bail in this cauſe purſuant to his undertaking.

By order of the Court,

Skinn.

On the motion of Serjeant Bolton for the plaintiff—Serjeant Groſe for the ſaid Thomas Abree Pickering.

Mr. Serjeant Bolton having read his client's affidavit, vide the ſame Appendix, No. III.

The

The Court offered to Mr. Pickering, that if he had a doubt on the legality of the plaintiff's debt, the ſame might be tried. This propoſal, which certainly wears the aſpect of favour, merits the reporters acknowledgement, and it becomes his duty to give his reaſons why he did not accept it. At that time he was conteſting, and meant farther to conteſt, the Court's authority to make him, without the aid of a jury, to pay any ſpecific damage; that is to ſay, a jury between the plaintiff and the reporter — not a jury between Kirkman and V——n.

To proceed in the report. The plaintiff's attorney was in poſſeſſion of a rule which he knew not how to enforce — He called on Mr. Pickering, and demanded the payment of 193l. 3s. alledging, that was the amount of the debt and coſts, and delivered to Mr. Pickering a paper containing a copy of the laſt rule, and the following words and figures wrote under it.

	l.	s.
17th June, 1783 — Bill of exchange drawn by Andrew V——n, and Co. payable three months after date to the order of George Frederick Straas, for 3500 Livres Tournois, at their houſe at Meſſrs. Tourton and Ravels at Paris.	162	10

To

	l.	s.
To intereſt from 20th September 1783, to the 20th January 1785, being one year and four months,	10	13
	173	3
To coſts, as per bill delivered - -	20	0
	193	3

On the the plaintiffs attorney moved for an attachment againſt Mr. Pickering for not paying the above demand.

The reporter's counſel ſhewed cauſe — They admitted the Court had made ſuch a rule on the 29th of November, as above ſtated — They admitted Mr. Price had demanded the payment of 193l. 3s. but they contended the conſequence did not follow, that their client was bound to pay it, or that that was the ſum due to the plaintiff for debt and coſts.

The Court ſaid, that no ſum appearing on record to be due, the plaintiff could take nothing by his motion.

The reporter was next ſerved with a copy of the following rule:

Hilary Term, 25th Geo. III.

In the Common Pleas.

Kirkman, Eſq. againſt V——n.

Thurſday the 27th of January.

It is ordered, that Mr. Thomas Abree Pickering, upon notice of this rule to be given to him

or

or his agent, ſhall ſhew cauſe to this Court to-morrow why it ſhould not be referred to one of the Prothonotaries of this Court to ſettle and aſcertain the plaintiff's debt and coſts in this cauſe.

By order of the Court,
Skinn.

On the motion of Serjeant Bolton for the plaintiff.

The objections ſtated by the reporter to his counſel were as follow:

That he could not withdraw the plea of his client, who had denied the plaintiff's demand, and put himſelf upon the country.

That if the reporter ſhould ultimately be compelled to pay any money, it was reaſonable he ſhould have ſome mode of recovery againſt the defendant; that an account ſettled by the Prothonotary, without the defendant's concurrence, and paid without his requeſt, would not enable him ſo to do; whereas if the plaintiff obtained a regular judgement, the reporter could take an aſſignment thereof. That the defendant himſelf was juſtified in ſtating objections to the mode of proceeding — An officer of the Court could not diſcharge the duty of a judge and twelve jurymen— The officer could not be inveſted with power to do juſtice — He could not compel the attendance of witneſſes — He could not tender an oath to thoſe who voluntarily came. In ſhort, the defendant expected a trial by his peers — And although

though the defendant expected ſuch a trial, yet the reporter was not to be at the expence thereof.

The Court made the following rule.

Hilary Term, 25th Geo. III.

In the Common Pleas.

Kirkman, Eſq. againſt V——n.

Monday, the 7th of Feb.

Upon reading a rule made in this cauſe on the 27th of January laſt, and on hearing counſel on both ſides, it is ordered, that it be referred to one of the Prothonotaries of this Court to ſettle and aſcertain the plaintiff's debt and coſts in this cauſe,

By the Court,
Skinn,

On the motion of Serjeant Bolton for the plaintiff—Serjt. Groſe for Mr. Thos. Abree Pickering.

1785 Feb. 7. I appoint to-morrow evening at ſix o'clock,

EARLE.

Early on next morning the reporter wrote and ſent the following letter to his client;

" Sir,

" Yourſelf *againſt* Kirkman.

" The Court of Common Pleas having made a rule to refer your cauſe to the Prothonotary to aſcertain the amount of the debt ſaid to be owing to Mr. Kirkman, and to tax his coſts, with a view

view of my paying it, I muſt beg you will appoint ſome attorney to attend the Prothonotary on that buſineſs, becauſe whatever I pay I ſhall have a right of calling on you for, and am,

Sir,

Your moſt obedient ſervant,

T. A. Pickering.

Proceedings before the Prothonotary.

Mr. Price and Mr. Pickering attended, but without either of their clients with them, or any witneſſes on their behalves: and after Mr. Pickering had produced a copy of the above letter, and remarked how much more he thought the proceeding related to the defendant than to him, and who was not preſent, the Prothonotary proceeded, ex parte, and on the parol repreſentations of the plaintiff's attorney, who exhibited what, he ſaid, and Mr. Pickering doubted not, was a true copy of the bill of exchange ſet forth in the pleadings, and alledged the original bill was loſt. Mr. Price next eſtimated the debt, and the Prothonotary taxed the coſts.

On the 10th of February the Prothonotary made his parol report — That he had been attended as above, and that the action was brought on a bill of exchange for the recovery of 3900 Livres Tournois, which, with intereſt and coſts, amounted to 195l. 6s. 7d. ſterling; and that it appeared unto him, by a copy of the ſaid bill,

(the original being ſaid to be loſt) that George Frederick Straas, who, the declaration ſtated, had indorſed the bill to the plaintiff, had in fact made no ſuch indorſement, but, on the contrary, the ſaid George Frederick Straas had actually indorſed the ſame in theſe ſpecial words, " Payes " a l'ordre de Meſſ. Battier Zornlin & Comp., " valeu recuë de Monſieur Jacob Kirkman, " G. F. Straas."

Serjeant Groſe then got up and obſerved, there was a deciſive end to the whole controverſy, as the plaintiff could not ſupport his action, and at niſi prius muſt have been nonſuited; but the right honourable Lord Chief Juſtice Loughborough, with a zeal to do public juſtice, which in this one inſtance perhaps carried his Lordſhip beyond his judicial character, declared, it appeared unto him, that Meſſ. Battier Zornlin and Company were truſtees for the plaintiff, and that in equity the plaintiff was intitled to the money.

The following rule was made.

Hilary Term, 25th George III.

In the Common Pleas.

Kirkman, Eſq. againſt V——n.

Thurſday, the 10th of Feb.

Upon reading a rule made in this cauſe on Monday laſt, and on hearing Mr. Prothonotary Earle's report, and counſel on both ſides — It is ordered, that Thomas Abree Pickering do and

ſhall

ſhall forthwith pay to the plaintiff or his attorney, the ſum of 195l. 6s. 7d. reported by the Prothonotary to be due for debt, intereſt, and coſts in this cauſe.

By the Court.
Skinn.

On the motion of Serjeant Bolton for the plaintiff — Serjt. Groſe for the ſaid Thomas Abree Pickering.

On the an attachment was moved for, and Mr. Pickering gave to his counſel inſtructions in writing in hac verba:

KIRKMAN against V——N. } TO object in the name of Thomas Abree Pickering, to an attachment iſſuing againſt him for the non-payment of 195l. 6s. 7d. to the plaintiff or his attorney, the ſaid ſum including damages, as well as coſts, and which damages have not been aſſeſſed by a jury.

The reporter's counſel declined to read the above few words, or to ſay any thing to the Court — the attachment therefore iſſued ſub ſilentio.

In this ſituation Mr. Pickering waited on the Sheriffs of London, and acquainted them with his caſe, and, previouſly to their receiving the attachment, he lodged in their hands ſecurity for the payment of the money, and all ſubſequent charges, and then gave notice of motion for the

firſt day of Eaſter Term, that he would apply to be admitted on bail to anſwer upon interrogatories the contempt wherewith he was charged — but ſuch motion was delayed until the Sheriffs were ruled to return the writ.

The Sheriffs being ruled, made the following return:

" We have attached the within-named Thomas " Abree Pickering, whoſe body we have ready.

The anſwer of John Bates, Eſq. and John Hopkins, Eſq. } Sheriffs.

This return was delivered into open Court by the reporter's counſel, who at the ſame time moved, that Mr. Pickering, who attended with the Sheriffs, might be admitted on bail to anſwer interrogatories, which was refuſed.

Thus the matter remained, until Mr. Pickering could diſcover, what ſteps the plaintiff's attorney meant to purſue, and on being ſerved with a notice on the 20th April 1785, that the Court would be moved, that the Sheriffs of London might be ordered to pay to the plaintiff or his attorney the ſum of 195l. 6s. 7d. received by them, the reporter, with a view to counteract that application, and attain an opportunity of appearing perſonally at the bar, in the actual cuſtody of the Sheriffs (which at that time the Court

Court refuſed to acknowledge Mr. Pickering) gave the plaintiff's attorney the following notice:

In the Common Pleas.

Jacob Kirkman, plaintiff;

Between and

Andrew V-----n, defendant.

Take notice, that this Honourable Court will be moved to-morrow, or ſo ſoon after as counſel can be heard, that the attachment iſſued againſt Thomas Abree Pickering may be quaſhed. Dated the 20th day of April 1785.

Yours, &c.

T. A. Pickering.

Pudding Lane.

To Mr. Price, plaintiff's attorney.

In ſupport of this motion, the reporter inſtructed his counſel,

That the writ was made returnable in fifteen days of Eaſter, a general return, whereas it was univerſally acknowledged among practitioners, as well as all the officers of both Courts, Common Pleas and King's Bench, that all attachments muſt be made returnable on a day certain in full term. That in confirmation of this opinion, the reporter would name a caſe in a book the Court of Common Pleas paid great reſpect to — Barnes 31. — "The *King* againſt *Harris* — The attach- "ment of contempt was returnable the day be- "fore the term. Chappell moved to quaſh it,

"ob-

" objecting it ought to be returnable at a day " certain in full term, and cannot properly be " made returnable on any other day: when the " proceeding is by original, the party may ap- " pear on the Eſſoign day, or any other of the " three days next following, but this proceſs muſt " be returnable on a day certain; and no inſtance " can be ſhewn in the King's Bench, or Com- " mon Pleas, where ſuch a writ was returnable " at a day intervening the Eſſoign day, and the " firſt day of term.—Wright for the proſecutor " urged, that all judgements relate to the Eſſoign " day, and this is a judicial writ: the Court is " never adjourned on the Eſſoign day, but com- " mences then, and continues to the quarto die " poſt. *The writ was ordered to be quaſhed.*"

A copy of the writ.

" George the Third, by the grace of God, of Great Britain, Frince, and Ireland, King, Defender of the Faith, &c. To the Sheriffs of London greeting, We command ye that ye attach Thomas Abree Pickering, if he be found in your bailiwic, and him ſafely keep, ſo that ye may have him before our Juſtices at Weſtminſter *in fifteen days of Eaſter*, to anſwer us of and concerning thoſe things which in our behalf ſhall be then and there objected againſt him, and have ye there this writ — Witneſs Alexander Lord Lough-

Lougborough, at Weſtminſter the 12th day of February, in the 25th year of our reign.

In fifteen days of Eaſter was the 10th April, 1785.

The firſt day of Term was the 13th ditto.

On the 21ſt of April Sir Thomas Davenport came into court, but there not being a full Court, he was requeſted to defer his motion.

The next day in the abſence of Sir Thomas Davenport, Mr. Serjeant Bolton addreſſed the Court with a motion, which he ſaid was founded on the objections ſtated by his brother Davenport on the preceding day, and after admitting there was an irregularity in the writ, which he could not ſupport, he moved that *the writ might be amended*. The Court recommended Mr. Serjeant Bolton to conſider of this motion.

On the 23d of April, Sir Thomas Davenport moved for the quaſhing of the writ.—Serjeant Bolton, who had in the interval of a day found cauſe againſt it, contended in oppoſition to Sir Thomas's argument, and the very ſtrong caſe in Barnes, that the writ was perfectly regular, and quoted a caſe he had the honour of arguing before the ſame Court in Eaſter term preceding—againſt Pitt—It was, he ſaid, on a clauſum fregit, wherein an Alias Diſtringas had iſſued, and the attempt was to quaſh the laſt writ, becauſe there were not fifteen days between the Teſte and return. The reporter

porter did not comprehend the analogy; and as it would be uncandid to give the argument defectively, he, in juſtice to the learned Serjeant, refers the ingenious reader to the caſe alluded to.

The Court gave their opinion that the return of the writ of attachment was good.

The Court afterwards made a rule for the Sheriffs of London to pay the money, and immediately thereupon Mr. Pickering paid the ſame to the plaintiff's attorney.

Thus ended a conteſt, which had continued throughout four terms. The Author of this report underſtands that the reſiſtance which he made to the proceedings here recorded, have been charged by ſome of the profeſſion, with obſtinacy. He is happy that his conduct in the whole matter has not been ſtigmatized by any worſe imputation. It is an eaſier matter to bring a general accuſation of obſtinacy againſt a man's character than to prove it by entering into a detail of circumſtances, that he is juſtly chargeable therewith in any particular inſtance. But without a portion of obſtinacy, that is, of firmneſs and perſeverance, it is not always poſſible to diſcharge the duty of a lawyer. An adviſer, who ſhould advance opinions, which he would not ſteadily maintain, would not often be conſulted.—An advocate, who ſhould eaſily yield to oppoſition, and ſacrifice his own judgement, to arguments without weight, or to authority

thority without equity, in this free country, would ſeldom hold a brief. — A bold, a confident, and even obſtinate appeal to the laws will ever be found to coexiſt with a genuine ſpirit of freedom.

A propoſal for an Act of Parliament for regulating proceedings on writs of attachment for contumacy.

WHEREAS writs of perſonal attachment iſſuing from Courts of Record againſt His Majeſty's ſubjects for contempts of the law of the land, and thoſe in the adminiſtration thereof, have by long uſage and cuſtom been tolerated and approved, and are part of the law of the realm. — And whereas *ſome doubts have ariſen, whether certain writs of attachments iſſuing from His Majeſty's Courts of Common Law, are in the nature of executions and are bailable: to obviate which doubts, as alſo for the greater ſecurity of the perſons of His Majeſty's loyal ſubjects, — May it be enacted and declared* by the King's Moſt Excellent Majeſty, with the advice and conſent of the Lords Spiritual and Temporal, and Commons, in the preſent Parliament aſſembled, and by the authority of the ſame, That all perſonal attachments from and after the

day of next enſuing, iſſuing from the courts of common law, ſhall be, and are hereby declared to be, bailable, and that the party or parties charged with contumacy, ſhall have an opportunity of clearing himſelf, herſelf, or themſelves, from the imputation thereof. And that the Sheriff or Sheriffs, to whom any writ or writs of attachments iſſuing from any Court of Common Law ſhall be directed, ſhall and are hereby required

required from and after the ſaid day of to take ſecurity of the perſon or perſons attached by bond, with two or more ſufficient ſureties in the penalty of double the ſum for which bail is required and no more, (ſuch ſum or ſums for which bail is ſo required, to be indorſed on the back of the ſaid writ, or writs) for his, her, and their perſonal appearance in open Court at the return of the ſaid writ or writs, and to do and perform ſuch things as ſhall be required by the ſaid Court, and after ſuch bond taken, to diſcharge the ſaid perſon or perſons ſo attached out of his or their cuſtody.

And whereas *Writs of Attachment iſſue from the Courts of Common Law, on rules and orders, which not being definitive judgements, no appeal lies thereon and therefrom to any ſuperior Court of Judicature, as in like caſes of the Court of Equity:* And whereas *in caſes wherein proceeding have been had on writs of attachment, ſuch proceedings have not been, or are not, uſually entered upon record, and by reaſon whereof no writ of error, bill of exception, or any appeal whatever lies from the ſaid Courts iſſuing the ſaid proceſs to any ſuperior Court of Judicature, and the ſubject of this realm not having been tried by a jury, may be impriſoned without an eaſy mode of redreſs:* for the remedy and prevention whereof, may it be further enacted by the authority aforeſaid,

that from and after the ſaid day of 178 all interrogatories, examinations, proceedings, reports, judgements, and deciſions, interlocutory or final, exhibited, taken, awarded or pronounced on any perſonal attachments iſſuing out of any of His Majeſtys Courts of Common Law, be, and are hereby required to be, entered and filed on record in the reſpective Court or Courts iſſuing and deciding on ſuch proceſs.

And may it be further enacted by the authority aforeſaid, that any perſon or perſons againſt whom any ſuch attachment or attachments iſſue, or have iſſued, tendering and giving bail or ſufficient ſecurities in open Court, to appear from day to day and praying interrogatories to be exhibited againſt him, her, or them, touching any contempt or contempts alledged, or charged to be committed by him, her, or them, and afterwards having reaſon to complain of, or object to, any one or more interrogatory or interrogatories exhibited to him, her, or them, he, ſhe, or they, ſhall and may tender a bill or bills of exception, or exceptions, and the Judge or Judges to whom ſuch bill or bills ſhall be ſo tendered ſhall be bound to accept and receive the ſame, and affix his or their ſeals thereon, and ſuch proceedings ſhall be had thereon as in caſes of bills of exceptions are accuſtomed; or having reaſon to complain of error in any ſubſequent proceedings, reports, judgements, and deciſions, interlocutory or final, taken, awarded, or pro-

pronounced, or having cauſe to appeal therefrom, ſhall and may have a writ or writs to remove the record and the proceedings from ſuch Court wherein the ſame is depending, to ſuch ſuperior Court of Judicature to which records in actions of debt, or upon promiſes in the ſame Court, are by law removable; and that pending ſuch bill or bills of exception or exceptions, writ or writs of error, and until ſuch bill or bills of exception or exceptions are diſpoſed of, or ſuch writ or writs of error are non proſſed, or the judgement is affirmed, ſuch perſon or perſons charged with contempt ſhall not be adjudged guilty thereof or ſuffer impriſonment.

APPENDIX.

APPENDIX, No. I.

In the Common Pleas.

Jacob Kirkman, Plaintiff;

Between and

Andrew V——n, Defendant

Stephen Price, of Northumberland Street, in the Strand, in the County of Middleſex, Gentleman, maketh oath and ſaith, that the Defendant was arreſted by the Sheriff of Middleſex at the ſuit of the Plaintiff for 162l. and upwards, upon a Bill of Exchange by virtue of a Writ of Capias ad reſpondendum, returnable in eight days of Saint Hilary laſt paſt, and Mr. Thomas Abree Pickering, the Defendant's Attorney, on the 28th day of Novenber, 1783, gave this deponent the annext undertaking, to put in bail for the Defendant, whereupon the ſaid Defendant was diſcharged out of cuſtody of the Sheriff, and that a declaration was delivered to the ſaid Mr. Pickering, in this cauſe as of Hilary Term laſt, conditionally till ſpecial bail was put in and perfected; and that he hath frequently applied to and requeſted the ſaid Mr. Pickering to put in bail, purſuant to his ſaid undertaking, and that no bail are yet juſtified in this cauſe.

Sworn the 21ſt of June, 1784.

Stephen Price.

The undertaking referred to by the preceding affidavit.

In

In the Common Pleas.

Jacob Kirkman, Esq. Plaintiff;

Between and

Andrew V——n, Defendant.

I do hereby undertake to put in good bail above, in the above cause, if required. Dated this 28th day of November, 1783.

T. A. Pickering, Defendant's Attorney.

APPENDIX, No. II.

In the Common Pleas.

Jacob Kirkman, Esq. Plaintiff;

Between and

Andrew V——n, Defendant.

Thomas Abree Pickering, of Pudding Lane, London, Gentleman, one of the Attornies of his Majesty's Court of Kings Bench, and Andrew V——n, the above-named Defendant, severally make oath as follows. And first this deponent Thomas Abree Pickering for himself saith that in the Month of November 1783, the above-named Defendant being arrested on a capias ad respondendum returnable (as this deponent believes) in Michaelmas Term, and not in Hilary Term last, sent for this deponent, and it was concluded that this deponent should meet Mr. Price, the Plaintiff's Attorney, the next day, being the 28th of Novem-

November, which this deponent did, when it was agreed to call a meeting of the Defendant's Creditors, and Mr. Price obſerved, that whatever the creditors concluded on, his Client the Plaintiff would do the ſame; and it was alſo agreed, that the ſaid Mr. Price was to renew the writ, and this deponent was to give him an undertaking to put in bail; but it was not underſtood that ſuch bail were to be put in unleſs Mr. Price's client ſhould be determined to proſecute the action, which at that time was not expected to be the caſe. And this deponent ſaith, that the ſaid Mr. Price and the Plaintiff's Nephew attended the ſaid meeting of the creditors at the City Coffee Houſe, and this deponent received inſtructions from them, and all the other creditors preſent, to prepare an aſſignment of Mr. V——'s eſtate and effects to certain truſtees then nominated, by which the creditors were to accept Mr. V——'s property in full ſatisfaction of their debts; but Mr. Kirkman, the plaintiff, afterwards refuſed to execute ſuch deed, unleſs the truſtees undertook to pay him a certain dividend of 6s. 8d. in the pound, which, being deliberated on by them at ſome of their ſubſequent meetings, was declined. The ſaid Mr. Kirkman afterwards propoſed to accept of a ſmaller dividend in the pound, which was likewiſe refuſed; and this deponent admit, a declaration was delivered unto him in Hilary Term, but ſaith, he believes that farther proceedings were not afterwards

intend

intended, for that ſuch-like offers as above mentioned were continually making, until Mr. Kirkman diſcovered that a bill of one hundred pounds and upwards value, (which one Straas had from the defendant V——n, and which was drawn on a perſon at Cadiz, and had been indorſed by Straas to Kirkman) had been ſtopt payment abroad, by the direction of Mr. V——n, or his truſtees in England, and thereupon the ſaid Mr. Kirkman's attorney Mr. Price, had made many applications to this deponent to take off the injunction, and permit Mr. Kirkman or his agent to receive the money abroad, and upon thoſe terms the ſaid Mr. Kirkman would come in with the other creditors, and ſign the deed for the debt, for which he had arreſted the defendant. And this deponent ſaith, that he communicated ſuch propoſal to Mr. V——n, and one of his acting truſtees, but that no final anſwer has yet been given thereto. And this deponent ſaith that Mr. Kirkman continued to make ſuch ſolicitations through his attorney, Mr. Price, down to, and in this preſent Trinity Term, and the matter ſtill remains in contemplation. And this deponent ſaith, that under the above, and following circumſtances, he never did conceive, that the plaintiff's attorney was deſirous of proſecuting his action; and this deponent denies that ever, to his recollection, the ſaid Mr. Price ſeriouſly required him to put in bail, in order that he might proſecute the action. And this

deponent ſaith, that had Mr. Price informed this deponent his client was determined to proſecute this action, and not to make or liſten to any more propoſals of accommodation, this deponent would have put in good bail in this cauſe, but on the contrary, the ſaid Mr. Price has repeatedly preſſed this deponent to get Mr. V——n and his truſtees' conſent to his client's receiving the money on the foriegn bill, on the terms above propoſed. And this deponent ſaith, he never had the leaſt hint or ſuſpicion of the preſent attempt, or motion to this honourable Court, till a few days ſince, and that immediately thereupon he put in good bail for the ſaid defendant. And this deponent ſaith, he did not receive a notice of the intended motion, till after he had put in ſuch bail, and this deponent obſerves, that the plaintiff's attorney does not ſwear, that bail were not put in, but that no bail are yet juſtified in this cauſe, and in anſwer to which, this deponent ſaith, that no exception has been made to the bail ſo put in. And this deponent Andrew V——n for himſelf ſaith, that from the time he this deponent was releaſed out of cuſtody, he has always conſidered the matter between him and the plaintiff Mr. Kirkman in a train of being compromiſed and ſettled, and of courſe has called on the ſaid Mr. Kirkman, and his nephew, who tranſacts the buſineſs of his ſaid uncle, many times, and neither the ſaid Mr. Kirkman nor his ſaid nephew at any of thoſe times ever made the leaſt

mention

mention or desire of prosecuting the action, but, on the contrary, the said nephew did always, and particularly at their last interview at Mr. Kirkman's house, in the present month of June, assure this deponent, that it was not his uncle's intentions to prosecute the same.

APPENDIX, No. III.

In the Common Pleas.

Jacob Kirkman, Esq. plaintiff;

Between and

Andrew V——n, defendant.

Jacob Kirkman, of Blackheath, in the county of Kent, Esquire, the plaintiff above named; Jacob Kirkman of Broad Street, in the Parish of Saint James, Westminster, Gentleman, nephew to the plaintiff, and Stephen Price, of Northumberland Street, in the Strand, in the county of Middlesex, Gentleman, the said plaintiff's attorney in this cause, severally make oath, and first, the said Jacob Kirkman, the plaintiff, for himself, saith, that he never

converſed with Mr. Pickering, the defendant's attorney, on the ſubject of this action, nor with the defendant except once, which, to the beſt of his recollection and belief, was ſometime in the month of January laſt, when the ſaid defendant called on, and requeſted this deponent to ſign a deed of compoſition with the reſt of his creditors which this deponent refuſed to comply with, and informed the ſaid defendant he had given his directions to Mr. Price, his attorney, about the ſame. Saith he never gave the ſaid defendant any reaſon to ſuppoſe he ſhould come into his propoſed compoſition; on the contrary, this deponent upbraided and reprimanded him for giving his bills to deceive this deponent and the public, when he did not intend to pay them. And theſe deponents Jacob Kirkman the younger, and Stephen Price, for themſelves ſeverally ſay, the writ on which the defendant was arreſted, was returnable in fifteen days of Saint Martin in Michaelmas term, 1783, that on the return day of ſuch writ, theſe deponents, at the requeſt of the defendant and his attorney, met them at the houſe of Mr. Ironmonger, a Sheriffs Officer, in Wild Street, Lincoln's-Inn Fields, when they informed theſe deponents it was their intention to call a meeting of the defendant's creditors, and on theſe deponents inquiring into the ſtate of his affairs, they informed them that his effects would produce from twelve to ſixteen ſhillings in the pound to all his creditors. And

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theſe deponents further ſeverally ſay, they promiſed to attend ſuch propoſed meeting, and if any reaſonable propoſal was made they would recommend it to the plaintiff to agree thereto. And both theſe deponents ſeverally ſay that the ſaid writ being returnable on the laſt return of Michaelmas Term, the deponent Price, at the requeſt of the defendant and his attorney, renewed ſuch writ returnable in eight days of Saint Hilary, and on the 28th day of November, 1783, Mr. Pickering gave his undertaking to put in good bail above in this cauſe if required. And theſe deponents further ſeverally ſay, that a few days afterwards a meeting of the ſaid defendant's creditors was accordingly had at the City Coffee Houſe, when theſe deponents attended, but theſe deponents deny that they, or either of them, gave any conſent or directions for preparing ſuch deed of aſſignment of defendant's effects to truſtees for the benefit of his creditors. And this deponent Stephen Price for himſelf ſaith, he conſidered Mr. Pickering's undertaking to be, to put in bail to the renewed writ returnable in Hilary term laſt, before which time this deponent had more than once informed Mr. Pickering that the plaintiff would not agree to defendant's propoſals — And this deponent further ſaith, that ſince he delivered the declaration in this cauſe he wrote to the ſaid Mr. Pickering, and upwards of ten times ſpoke to and expoſtulated with him on his not putting in bail purſuant to his undertaking,

taking, and informed the ſaid Mr. Pickering, that the plaintiff had blamed this deponent for his negligence, when the ſaid Mr. Pickering promiſed this deponent from time to time he would put in bail—Saith he never applied to Mr. Pickering, or the ſaid defendant or his aſſignees to prevail on them to take off the injunction they had laid on the bill of exchange in Cadiz: on the contrary, his various applications to the ſaid Mr. Pickering were, to requeſt he would put in bail in this cauſe; though this deponent admits he did on one or more of ſuch applications remark to the ſaid Mr. Pickering the hardſhip plaintiff laid under in being kept out of the money due to him on the Spaniſh bill, and alſo the preſent debt, and that if they would remove the embargo laid on the Spaniſh bill, and permit the plaintiff to receive it without trouble, it might be the means of the plaintiff's acceding to the terms propoſed—Saith that no bail above was put in in this cauſe till after a notice of an application to this Honourable Court was left at Mr. Pickering's houſe—And the deponent, Jacob Kirkman, the younger, for himſelf further ſaith, he hath been in company with the deponent Price when they have met Mr. Pickering, the defendant's attorney, in Fleet Street, and other places, in the city, three or four times, when this deponent hath inquired of Mr. Price if bail had been put in, or what ſituation this cauſe was in; when the ſaid Mr. Price informed this

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deponent he had not been able to get the ſaid Mr. Pickering to put in bail, but that he would ſpeak to him about it — Saith the ſaid Mr. Price, in this deponent's preſence and hearing, aſked Mr. Pickering, when he meant to put in bail, and why he did not put them in; and expoſtulated with him on his negligence and inattention in not having before put in ſuch bail; ſaying, he was blamed by the plaintiff in not having proceeded further in this action, when Mr. Pickering promiſed he would put in ſuch bail, but preſſed this deponent to recommend it to his uncle to accede to the terms propoſed to the defendant's creditors, which this deponent informed him would not be complied with; nor did this deponent at any of ſuch times, or any other time, give Mr. Pickering to underſtand ſuch terms would be complied with, or that the putting in bail would be diſpenſed with."

Exd 4/24/07

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